

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Order Declaring Warm Springs	)	WC Docket No. 16-284
Telecommunications Company an Incumbent	)	
Local Exchange Carrier for the Warm Springs	)	
Reservation in Oregon	)	

**Comments of  
The National Tribal Telecommunications Association**

**I. INTRODUCTION AND SUMMARY**

The National Tribal Telecommunications Association (NTTA) provides these comments in support of the petition filed by Warm Springs Telecommunications Company in the above-captioned proceeding.<sup>1</sup>

NTTA consists of Tribally-owned communications companies including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O’odham Utility Authority, and Warm Springs Telecom. NTTA’s mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

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<sup>1</sup> *Petition for Order Declaring Warm Springs Telecommunications Company an Incumbent Local Exchange Carrier for the Warm Springs Reservation in Oregon*, filed September 9, 2016 (*Petition*)

In the *Petition*, Warms Springs Telecommunications Company (WST), an NTTA member, makes a clear and convincing case that it should be designated the ILEC for purposes of providing telecommunications services to the Confederated Tribes of Warms Springs (CTWS) Reservation. WST's circumstances easily meet the requirements in the Telecommunications Act for treatment of comparable carriers as incumbents<sup>2</sup> and, as such, the Commission should expeditiously grant WST's *Petition*. NTTA will support and expand on WST's arguments for treatment as an ILEC and will also briefly respond to issues raised in the opposition filed by CenturyLink, the current incumbent carrier in a portion of the CTWS Reservation.<sup>3</sup>

## II. STANDARDS FOR APPROVAL

WST's *Petition* persuasively argues that it meets the standards as spelled out in section 251(h)(2) of the Act:

The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

- (A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);
- (B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and
- (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

In addition, WST provides an analysis of a similar proceeding in which a competitive carrier, Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers), requested to be designated the incumbent in a certain area.<sup>4</sup> In that proceeding the Commission granted Mid-Rivers' request and in doing so relied heavily on Section 251(h)(2). Thus, in this proceeding WST properly

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<sup>2</sup> 47 U.S.C. § 251(h)(2)

<sup>3</sup> Opposition of CenturyLink to *Petition of the Warm Springs Telecommunications Company*, filed September 19, 2016 in WC Docket No. 16-284 (*CenturyLink Opposition*)

<sup>4</sup> See *In the Matter of Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, WC Docket No. 02-78

addresses Section 251(h)(2) and successfully argues that it should be declared the incumbent in the CTWS area.

#### **A. Comparable Market Position within an Area**

According to Section 251(h)(2)(A), the Commission may declare an ILEC if “such a carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph 1 [the definition of ILEC].” There are two key issues in this section: (1) the area under consideration, and (2) if the petitioning carrier occupies a position in that area that is comparable to the current ILEC. CenturyLink, in its Opposition, makes much of the allegation that WST cannot serve all of the Warm Springs exchange, specifically a small number (16) of customers not residing in the CTWS Reservation.<sup>5</sup> However, CenturyLink ignores the clear precedent established by the Commission in the Mid-Rivers case – “In particular, section 251(h)(2) uses the phrase ‘within an area’ instead of referring to a service territory. The use of this broad, general language gives the Commission ample flexibility to interpret the term ‘area’...”<sup>6</sup> In the Mid-Rivers case, the Commission used the flexibility afforded by section 251(h)(2)(A) to define “area” as the Terry, Montana exchange and surrounding area (the area requested by Mid-Rivers).

In the instant case, it is well within the Commission’s authority, and within the Mid-Rivers precedent, to use this flexibility to define the area in which WST is providing service comparable to the ILEC as the portions of the Warm Springs and Wanapine exchanges that are located within the CTWS Reservation. WST, as a wholly-owned and operated entity by CTWS, exists for the sole purpose of providing quality services to residents of the Reservation, and thus should not and cannot be required to provide service outside the Reservation boundaries. As stated in the Mid-Rivers Order:

“Moreover, in order to meet the requirements that the new LEC have a market position comparable to a legacy incumbent LEC’s and have substantially replaced the legacy incumbent LEC, the new LEC will likely have to overbuild a large portion of the legacy incumbent LEC’s facilities. Given the expense of such facility construction, replacement

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<sup>5</sup> *CenturyLink Opposition* at 3; see also *Id.*, at 2 “...CenturyLink serves approximately 16 lines, in two separate areas, that are outside of the reservation boundaries.”

<sup>6</sup> Report and Order, WC Docket No. 02-78 (FCC 06-132), released October 11, 2006, at 10 (*Mid-Rivers Order*)

of a legacy incumbent LEC consistent with the requirements of section 251(h)(2) is most likely to occur in limited geographic areas such as individual local exchanges or small groups of exchanges, particularly in rural areas.”<sup>7</sup>

In other words, in order for the language in section 251 to have any effect at all, the definition of “area” must provide enough flexibility so as to allow for application in the real world of building and maintaining telecommunications networks.

WST has provided evidence and a convincing argument that it meets the section 251(h)(2)(A) requirements: it provides service within the CTWS Reservation (the “area”) and that it occupies a position within that area that is comparable to CenturyLink.

### **B. Substantially Replaced the Incumbent**

Section 251(h)(2)(B) requires that a carrier can be designated an ILEC if “such a carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1).” WST makes a solid case that it has indeed substantially replaced CenturyLink in the confines of the CTWS Reservation, especially considering the fact that it now serves 85% of the local exchange market on the Reservation.<sup>8</sup> While NTTA believes WST’s case in this regard is compelling and meets the section 251(h)(2)(B) requirements, there is one point contained in WST’s petition that merits further notice:

“Recently, a new neighborhood with 36 new houses was constructed on the Reservation. CenturyLink declined to build any network to serve these homes with its phone and broadband service.”<sup>9</sup>

This single statement provides ample proof that CenturyLink no longer considers itself to be the ILEC and WST, by virtue of serving this new construction, is the *de facto* ILEC already.

### **C. Public Interest, Convenience and Necessity**

Section 251(h)(2)(C) requires that an ILEC designation be “consistent with the public interest, convenience, and necessity and the purposes of this section.” In this regard, WST makes

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<sup>7</sup> *Id.*

<sup>8</sup> *WST Petition* at 8

<sup>9</sup> *Id.*

an excellent case that its designation as the ILEC in the CTWS Reservation area is not only in the public interest, but that the public interest demands the relief sought in the petition. The most important point is that WST is Tribally-owned and operated, with its entire existence devoted to ensuring the residents and business on the CTWS Reservation have access to voice and broadband services that are reasonably comparable to those available in urban areas, and at rates that are reasonably comparable. WST made the case that CenturyLink is no longer willing or able to be that provider.

The Commission has recognized in the past the inherent benefit of having Tribally-owned carriers serving Tribal areas. In an order approving the waiver of section 54.305 of the Commission's rules requested by Mescalero Apache Telecom, Inc. (MATI), the Commission stated:

"...Mescalero is a newly-formed, tribally-owned and operated, carrier established for the purpose of addressing the severe shortage of telecommunication services on the Reservation. In addressing Mescalero's waiver request, we are mindful of our obligation to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance. In doing so, we attempt to ensure that Indian Tribes have adequate access to telecommunications services. By granting this waiver, the Mescalero Apache Tribe will gain control over the deployment and provision of telecommunications services on the Reservation, thereby furthering tribal self-government and self-determination. As a tribally-owned and operated carrier, Mescalero is particularly suited to understand and address the unique needs of the Mescalero Apache community and to set communications priorities and goals for the welfare of the membership."<sup>10</sup>

WST now occupies much the same position that MATI did at the time of their order, with the sole difference being WST is requesting treatment under section 251(h)(2) as opposed to purchasing lines from the incumbent. However, the principles as recognized by the Commission are exactly the same – all things remaining equal, it is preferable for Tribally-owned companies to serve Tribal areas.

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<sup>10</sup> *In the Matter of Mescalero Apache Telecom, Inc., Waiver of Section 54.305 of the Commission's Rules*, Order (FCC 01-13), released January 18, 2001 at 8

### **III. CONCLUSION**

NTTA requests the Commission approve WST's Petition on an expeditious basis. WST has met and exceeded the requirements set out in section 251(h)(2), and as a Tribally-owned carrier, has an inherent advantage in serving Tribal areas. The CTWS deserves nothing less than a carrier that is devoted to ensuring the best communications services are available, and the fact is that CenturyLink has proven it is not that carrier.

Respectfully Submitted,

Godfrey Enjady  
*President*  
**National Tribal Telecommunications Association**

October 20, 2016